

INDEX OF EXHIBITS

TO

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEFENDANT
SMITHKLINE BEECHAM CORPORATION, d/b/a
GLAXOSMITHKLINE, PLC'S MOTION FOR SUMMARY JUDGMENT**

(Michael Shane Christopher, et al. v. SmithKline Beecham Corporation, d/b/a
GlaxoSmithKline, Case No. CV 08-01498-PHX-FJM)

Exhibit C	Frank Buchanan April 23, 2009 Deposition Excerpts and Exhibits thereto (Part 1 of 3)
-----------	---

EXHIBIT C

(Excerpts of Frank Buchanan's April 23, 2009 Deposition)

TO

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEFENDANT
SMITHKLINE BEECHAM CORPORATION, d/b/a
GLAXOSMITHKLINE, PLC'S MOTION FOR SUMMARY JUDGMENT**

**(Michael Shane Christopher, et al. v. SmithKline Beecham Corporation, d/b/a
GlaxoSmithKline, Case No. CV 08-01498-PHX-FJM)**

Michael Shane Christopher, etc., et al. v. SmithKline Beecham Corporation, etc.

Frank T. Buchanan

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Michael Shane Christopher,)
filing individually and on)
behalf of others similarly)
situated; and Frank Buchanan,)
filing individually and on)
behalf of all others)
similarly situated;)

Plaintiffs,)

versus)

No. CV-01498-FJM

SmithKline Beecham Corporation,)
d/b/a GlaxoSmithKline;)

Defendant.)

DEPOSITION OF: FRANK T. BUCHANAN

TAKEN ON: April 23, 2009

28984

ALTHEA L. MILLER
CSR No. 3353, RPR

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A Correct.

2 Q When was that?

3 A I couldn't say the exact date. I do know

4 that there was a change in leadership. We -- we got

5 a regional vice president named Chris Hansen. It

6 seemed to coincide with -- with that change, where a

7 bulk of these changes went -- went on.

8 Q And do you know whether these changes were

9 driven by Chris Hansen in the region or driven from

10 somewhere else?

11 A I don't know for sure.

12 Q Okay. So it could have been different had

13 you had a different regional vice president?

14 A I know that, when we had a different

15 regional vice president, things did not operate in

16 that fashion.

17 Whether or not that change was initiated by

18 the new one, I -- I -- I don't know.

19 Q Okay. I'm going to shift gears a little

20 bit on you here and talk about your employment

21 before you joined GSK.

22 A Sure.

23 Q The job you held immediately prior to

24 joining GSK was with Qwest Communications?

25 A That is correct.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q During what period of time did you work
2 with Qwest?

3 A I got hired -- see, it would have been
4 August -- August of 2001, approximately, is when I
5 started working there.

6 And I was employed through May or June of
7 2003.

8 Q Okay. And what was your job during that
9 time period?

10 A Initially, I was hired as a small business
11 sales representative.

12 I was then promoted to a management
13 position in the sales -- business sales arena for
14 the last probably five months I was there.

15 Q Okay. And what were your duties, generally
16 speaking, as a small business sales rep?

17 A To sell business products to small -- what
18 they would consider to be small businesses; so
19 telephone lines, high-speed Internet, cell phones,
20 things of that nature.

21 Q Who was your supervisor in that position?

22 A Initially -- for a bulk of it, a gentleman
23 by the name of Gary Bever. Last name is B-e-v-e-r.

24 Q Okay. And for the rest of it, who was your
25 supervisor?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A It's a gentleman named Patrick -- I'm
2 remiss to find his last name. I can't think of it
3 right now.

4 Q Okay. Did you receive a base salary as a
5 rep for Qwest?

6 A I did.

7 Q Did you receive any sort of incentive
8 compensation?

9 A I did.

10 Q How much was your base salary when you left
11 Qwest? Do you recall?

12 A Not offhand, no.

13 Q How was your incentive compensation
14 determined at Qwest?

15 A It was a structure in that you had a target
16 pay of -- for example, say -- we'll say \$50,000, and
17 what they would do is they would take 20 percent of
18 that and put it at risk; so that money was at risk.
19 If you mailed -- made your sales goal at the end of
20 each month, then you were paid that at-risk portion
21 of your pay.

22 If you went over goal, it would be your
23 at-risk plus a percentage. It was all based on --
24 on how much money you had at risk.

25 Q So you say you had target pay of \$50,000.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Was that supposed to be your total annual --

2 A Correct.

3 Q -- cash compensation?

4 A Exactly; right.

5 Q So that included your base salary?

6 A Correct.

7 Like I said, it's -- it's a little

8 convoluted, but you were given a salary, and then

9 they took 20 percent of it, roughly, and put it at

10 risk.

11 So if you made your sales goal, you got

12 that extra -- you know, you got that 20 percent; so

13 for the sake of your question, your base pay would

14 be 20 percent less than whatever your target was for

15 that year, your target salary.

16 Q So if your -- if your base salary was

17 \$50,000, it was possible annually to earn less than

18 that?

19 A Absolutely. If you didn't make your sales

20 goal, you would make far less than that.

21 Q Okay. And --

22 A 20 percent less.

23 Q Okay. And you only made more than your

24 base pay if you exceeded your sales goals monthly?

25 A That is -- that is correct.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q All right. And you get data from Qwest on
2 a monthly basis showing you how you were tracking as
3 to goal?

4 A No. The way it worked there is all of the
5 selling was over the phone; so I would track all of
6 my orders when I sold anything.

7 You put an order into the system. You'd
8 bill the customer. There was a lot of criteria
9 about whether or not that sale would count for you,
10 including if the customer paid for it, if it was
11 installed.

12 So then I would track the orders through
13 the system, and then you would keep a tally of
14 revenue that you directly earned, you know, for the
15 company over the course of the month.

16 So it was something that -- that -- that I
17 tracked; and then, at the end of the month, they
18 gave you a figure that said "This is what we have,"
19 and you compare the two.

20 Pretty much every month, they -- they did
21 not match; but you're able to work it out as to why,
22 you know, go back and find orders that didn't
23 complete through the system or something of that
24 nature.

25 Q Okay. Did you ever receive overtime pay

Buchanan, Frank 4/23/2009 9:40:00 AM

1 while you were employed by Qwest as a sales -- small
2 business sales representative?

3 A I don't remember. I was an hourly
4 employee, and I can't remember if I ever got
5 overtime.

6 I know they were very, very strict,
7 exceptionally strict, about clock time, in and out
8 for breaks and things like that for the sake of
9 overtime. So I -- but I don't remember if I ever
10 moved into overtime pay or not. I don't recall.

11 Q All right. So you actually -- did you --
12 did you literally punch a clock when you got to your
13 office?

14 A I did, on a computer.

15 Q Okay. And you don't recall, as you sit
16 here today, whether you actually were ever paid any
17 overtime?

18 A I don't. If I did, it was -- it was rare
19 or be an exception, certainly not the rule.

20 Q All right. So you never went out to the
21 customer and did outside sales work?

22 A It was rare. I did a few times, but it was
23 rare.

24 Q Okay. So very different from what you did,
25 then, at GSK?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A Without a question.

2 Q Okay. What was your job before you joined

3 Qwest in around August of '01?

4 A I worked for a startup company, managing a

5 sales team. It was called Shark Collector. It did

6 business-to-business collections. I did that for

7 maybe six months.

8 Q How do you say? Sharp Collector?

9 A Shark, S-h-a-r-k, uh-huh.

10 Q Okay.

11 A Catchy name.

12 Q And tell me again what Shark Collector's

13 business is.

14 A They worked -- they are actually a group of

15 attorneys that worked to collect

16 business-to-business debt; so if a contractor did

17 work for somebody and wasn't paid, we'd go after

18 them.

19 Q Okay. And what was your position with

20 Shark Collector?

21 A I was a sales rep.

22 Q And tell me what you did in that role.

23 A Cold contact. I made between 100 and 150

24 phone calls a day with businesses, trying to

25 schedule appointments to get in and sell our

Buchanan, Frank 4/23/2009 9:40:00 AM

1 services to them.

2 Q Did you ever go out and call on people?

3 A Every day.

4 Q You did.

5 So you made 100 to 150 calls per day; and
6 in the same day, you would actually go out and have
7 appointments in person?

8 A Correct.

9 Q How many appointments per day would you say
10 you averaged?

11 A Two to three.

12 Q You said you had that job for about six
13 months?

14 A That is correct.

15 Q Why did you leave?

16 A It was 100 percent sales commission job,
17 and it was a startup company; so the -- the
18 gentlemen that were running it were exceptional
19 people. I held them in very high regard.

20 However, it was a new business; it was a
21 new concept. So compensation policies were
22 changing. They were trying to make them equitable.

23 And, to be honest with you, I don't think
24 they were real sure about how to -- how to go -- I
25 think it was a great idea; but I don't think they

Buchanan, Frank 4/23/2009 9:40:00 AM

1 knew how to go about executing it, and when I
2 reached the point where I wasn't making very much
3 money, I had to leave.

4 Q What percentage of commission did you get
5 on a sale?

6 A I don't recall exactly. It was a set
7 amount. It -- it wasn't necessarily a percentage.
8 It was a set dollar amount. If you -- for every
9 case, I think it was \$100, if I remember right.

10 Q And it sounds like you did not receive any
11 sort of overtime compensation in that setting.

12 A It was 100 percent commission.

13 Q All right. And what was -- what position
14 did you hold before you worked for Shark Collector?

15 A Prior to that, I was in pharmaceutical
16 research. I was a research coordinator, conducting
17 clinical trials.

18 Q Who was the company that you worked for?

19 A The most recent one was Radiant Research.

20 Q And what were your duties with
21 Radiant Research?

22 A It was research coordinator. You execute
23 pharmaceutical research protocols; so you enroll
24 patients onto a protocol -- a protocol and then
25 coordinate all of their patient visits, coordinate

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A No.

2 Q Now, you -- second thing you mentioned were
3 layoffs that had occurred in October of '07 and you
4 thought there would be more layoffs.

5 A Correct.

6 Q Is it accurate, then, to say that you
7 thought you might be the victim of such a layoff,
8 were it to occur?

9 A Potentially.

10 Q Is that why it was a concern?

11 A Absolutely.

12 Q All right. And then the third thing you
13 mentioned was that, as part of the restructurings,
14 layoffs, managers had been demoted from manager
15 positions into rep positions?

16 A Correct.

17 Q All right. And your concern was that, if
18 there were opportunities in the future for
19 management openings, those people would be selected
20 ahead of people like you who had never been a
21 district manager?

22 A Exactly right.

23 Q All right. When did you start with
24 Schering-Plough?

25 A September 15th, 2003.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q Oh, sorry. Schering-Plough.

2 A Oh, I'm sorry. Schering-Plough.

3 I started with Schering-Plough March of
4 2008.

5 Q And what is your -- what was your job title
6 when you started with Schering-Plough?

7 A Pharmaceutical sales rep.

8 Q Have you been promoted since you joined
9 Schering-Plough in March of '08?

10 A Not yet.

11 Q So, as you sit here today, you're still a
12 pharmaceutical sales rep for Schering-Plough?

13 A Correct.

14 Q Does Schering-Plough have bands like at --
15 at GlaxoSmithKline there were S10s? S9s?

16 A Correct.

17 Q Does Schering-Plough have something
18 similar?

19 A They do.

20 Q And what are you now?

21 A To be honest with you, I don't know.

22 Q Do you know where on their ladder you fall?

23 A I don't.

24 Q Okay. What -- what drugs are you
25 responsible for at Schering-Plough?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 physical size than the territory you had with GSK
2 when you left GSK?

3 A Geographically, much larger.

4 Q Are there more or fewer physicians within
5 your Schering-Plough territory that you call on or
6 are responsible for calling on than there were in
7 your last GSK territory?

8 A They're approximately the same.

9 Q Now, Mr. Buchanan, can you compare for me
10 your duties as a pharmaceutical sales rep at
11 Schering-Plough to your duties as pharmaceutical
12 sales rep at GlaxoSmithKline.

13 A They're very similar.

14 Q Well, let me ask it this way: Can you
15 identify differences between your duties at
16 Schering-Plough and your duties at GlaxoSmithKline.

17 A There -- there are some finite differences
18 in the way call reporting is done, samples are
19 ordered, things of that nature; but as far as more
20 global responsibilities, no, there's no difference.

21 Q Who is your current supervisor at
22 Schering-Plough?

23 A Brian Martinez.

24 Q Is he a district manager?

25 A He is.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 there's only one sales aid per -- per drug.

2 Q Okay. You had to decide which drug product
3 you were going to focus on on a particular call with
4 a particular physician; correct?

5 A Correct.

6 Q And when you went through your new-hire
7 training with GSK in 2003 --

8 A Uh-huh.

9 Q -- and you -- you left in early '08; so you
10 had what? About five years with the company?

11 A Roughly, yeah.

12 Q Okay. Isn't it also true that over that
13 period of time, when you would call on a phys- -- on
14 a prescriber and would hear an objection of some
15 sort to prescribing the medication, you wouldn't
16 recite word for word the bullet points you had been
17 given in 2003, three or four or five years earlier;
18 correct?

19 A Not word for word, no. My memory wasn't
20 that good.

21 Q Okay. But it was the idea that you had to
22 present; correct?

23 A Correct. That certainly was the
24 expectation. Certainly, if your sales manager were
25 standing next to you, that would be the expectation.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q Okay. And when you called on prescribers
2 when you worked for GSK, am I right that you would
3 start a discussion with a doctor -- with -- with the
4 first doctor of the day differently than you might
5 start a discussion with the third doctor of the day?

6 A There's a lot of variables that go into
7 that. It would depend on the physician, the
8 product.

9 We spent a lot of training time, a bulk of
10 training time, on how to open a call with a
11 question; so a lot of times if, for example, I was
12 going to talk about Advair, that question that I'd
13 open the call with would probably be very consistent
14 throughout the day.

15 And same if it were Imitrex or any of the
16 other drugs I had. You know, you want to get a good
17 question to get a conversation started because
18 physicians have very little time and very little
19 patience.

20 So if you ask a question that is irrelevant
21 or too pie in the sky for them, they're going to
22 shut you down right away, and they'll tell you to
23 leave.

24 Q Right.

25 A So there is a lot of effort put into that.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 So when I got a good opening question, I
2 used it all the time.

3 Q And you actually came up with some of your
4 own good openings within guidelines, of course?

5 A Well, yeah, they would be a part of -- like
6 I said, we put a lot of time into training for that.
7 So a lot of them would come from training sessions,
8 where we would sit at a table and we'd all work
9 together, you know, with a facilitator and -- and --
10 and kick around some good questions, you know, that
11 we could open calls with, yeah.

12 Q And so that was one source of good openings
13 was these trainings sessions that --

14 A Absolutely.

15 Q -- as you developed experience, working as
16 a sales rep in the field, I'm sure you came up with
17 your own that worked for you?

18 A Yeah. You know, when your sales manager
19 rides with you, that's where a lot of those
20 conversations take place because you would use an
21 opening -- you know, I'd use an opening in front of
22 a doctor; and then afterward, in the car, the
23 district sales manager and I would talk about it
24 and -- and go over it and -- and refine that and
25 kind of buff it out to where it could be a little

Buchanan, Frank 4/23/2009 9:40:00 AM

1 more succinct or -- or get the conversation moving
2 in the direction to get to the sales aid or, you
3 know, get the conversation going down the -- the
4 road we want.

5 Q Okay. When did you first start to think
6 about leaving GlaxoSmithKline?

7 A Well, there was actually -- there's two
8 different times.

9 The first was when they -- I got word they
10 were closing my Flagstaff territory. They -- they
11 were going to close Flagstaff and actually pie the
12 territory off and my position was going to be
13 transferred to Vegas. I didn't want to go to Vegas;
14 so --

15 Q When was that?

16 A That would have been in 2005 is my best
17 recollection. It's probably early 2005.

18 Q Okay.

19 A And so I talked to my sales manager about
20 it. I didn't necessarily want to leave
21 GlaxoSmithKline. Matter of fact, I -- I didn't want
22 to leave at all. However, I didn't want to move to
23 Vegas. And when I prioritized those two things, not
24 moving to Vegas was worse than leaving Glaxo.

25 So I interviewed at several different

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A I do.

2 Q All right. And the current salary per year
3 that you indicated there was \$67,500; correct?

4 A Correct.

5 Q Was that, in fact, your last salary at
6 GlaxoSmithKline?

7 A No.

8 Q What was your last salary at
9 GlaxoSmithKline?

10 A Somewhere in the neighborhood of 58,000.

11 Q Does \$56,800 sound right?

12 A That sounds right.

13 Q Okay. Why did you put \$67,500 on this
14 employment application when, in fact, it was only
15 \$56,800 that you were being paid by GSK in base
16 salary?

17 A You know, I'm not sure. To be honest with
18 you, it's a little embarrassing to say, but this
19 application was filled out by my wife because my
20 handwriting is terrible; so I really don't know why
21 it's inaccurate.

22 Q If you look at the third page of that
23 exhibit, the first box is for your educational
24 background.

25 Do you see that?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 the respiratory product portfolio to allergists,
2 pulmonologists, pediatricians, family medical
3 practitioners?

4 A According to GlaxoSmithKline.

5 MS. CROCKETT: Objection. Form.

6 THE WITNESS: According to GlaxoSmithKline.

7 BY MS. SHAD:

8 Q Well, I'm not asking according to
9 GlaxoSmithKline. I'm asking according to you --

10 A Do you want my opinion?

11 Q No. I -- don't interrupt me, please.

12 My question to you is weren't you,

13 Frank Buchanan --

14 A Uh-huh.

15 Q -- as a GlaxoSmithKline pharmaceutical
16 sales representative, responsible for selling
17 respiratory drug products to allergists,
18 pulmonologists, pediatricians, and family medical
19 physicians?

20 A Not in my opinion.

21 MS. CROCKETT: Objection. Form.

22 THE WITNESS: Not in my opinion, no.

23 BY MS. SHAD:

24 Q And was there any reason why you would tell

25 Schering-Plough that that's what you did if that's

Buchanan, Frank 4/23/2009 9:40:00 AM

1 not what you thought you were doing?

2 A Absolutely.

3 Q Tell me why.

4 A It's standard verbiage for the industry.

5 Q Hmm. Okay. You've lost me. Explain to me
6 what you mean.

7 A What they consider to be sales in
8 pharmaceutical circles is -- is what -- is what I
9 said I did. I mean, what they would consider to be
10 sales or what pharmaceutical companies would call
11 "sales" is pretty consistent among all companies.

12 What I consider to be sales wasn't that.

13 Q But you certainly represented that what you
14 had been doing was selling; correct?

15 A That is correct.

16 Q All right. Did you also make that same
17 representation to the medical device companies that
18 you applied for?

19 A It's funny you bring that up. I did.

20 Q Okay.

21 A And that's why I was summarily not
22 interviewed any further.

23 I found that medical device companies
24 almost as a rule will not interview pharmaceutical
25 reps because they feel we don't do sales.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q Now, what in the world do you base that on?

2 A My own experience of being told that over
3 the phone by countless recruiters and companies that
4 I talk to trying to get a job at medical devices.

5 Q Okay. Who -- who told you that and when?

6 A Well, I -- certainly Ethicon and MiniMed
7 both made that very clear to me when I contacted
8 them. That would have been in December of '06 or --
9 no. I'm sorry. December of '07 or January of '08,
10 when I was looking for jobs.

11 Q And in what conversation with those two
12 companies was that made clear to you?

13 A When I -- I had contact information for
14 sales managers within those organizations. When I
15 contacted them to talk to them on the phone said,
16 "Look, I did the phone screen. You know, I haven't
17 heard anything back, you know. What's going on?"

18 They were pretty honest with me. They
19 said, "We don't hire pharma reps because you guys
20 don't sell."

21 If you go to that Website I was talking
22 about, probably 80 to 90 percent of medical device
23 postings will say "no pharma reps" on them. That's
24 why.

25 Q Okay. But you thought you sold?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A I thought what -- I thought what I was
2 hired to do was sell, and when I got out into the
3 field, that's -- that's not what we do.

4 Q You don't sell for Schering-Plough?

5 A No. I market for them.

6 Q Okay. But you certainly have described
7 what you do as selling repeatedly consistently?

8 A Within the pharmaceutical industry,
9 absolutely.

10 Q Uh-huh.

11 A It means something different in the pharma
12 world than, say, the rest.

13 Q Explain what you mean.

14 A When you just go into an interview to
15 describe your, quote, "sales experience," typically
16 the person that's interviewing you or when you're
17 explaining that, they expect that there's some type
18 of purchase made, that you're actually -- funds are
19 transferred. There's contracts signed. There is
20 some type of close that's made to -- to consummate
21 the sale and it -- and I came from a true sales
22 environment at Qwest.

23 And the differences are night and day
24 between a sales environment, where you actually sell
25 somebody something and they buy it and you fill out

Buchanan, Frank 4/23/2009 9:40:00 AM

1 an order and they're shipped merchandise compared to
2 in the pharmaceutical world that you're trying to
3 put -- you're trying to position your product to the
4 doctor to make it worth them writing on their pad.
5 They don't buy anything from you. They don't
6 purchase anything from you. They don't leave with
7 anything that you had. They simply write it down;
8 and then, if the patient is motivated, they will go
9 to the pharmacist and the pharmacist doesn't talk
10 them into another product, it'll get filled.

11 But as far as selling anything, that's not
12 really what goes on at all.

13 THE VIDEOGRAPHER: This concludes Tape 1 in
14 the deposition of Frank Buchanan. We are off the
15 record at 11:53.

16 (Off the record.)

17 THE VIDEOGRAPHER: This is Tape 2 in the
18 deposition of Frank Buchanan.

19 We are on the record at 11:58.

20 BY MS. SHAD:

21 Q Mr. Buchanan, before we went off the
22 record, you were telling me that the word "sales" in
23 the pharmaceutical industry doesn't really mean a
24 sale, according to you; correct?

25 A Correct.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 SPC 0022?

2 A I do.

3 Q And I'll just represent to you that any
4 document that I show you that's got the SPC
5 designation on it actually came from
6 Schering-Plough.

7 A Okay.

8 Q All right. So does this look to you to be
9 a copy of the resume that you submitted to
10 Schering-Plough?

11 A Yes.

12 Q All right. If you look at the top section
13 there under -- under "Pharmaceutical Sales
14 Professional" --

15 A Yes.

16 Q -- the first bullet point reads:
17 "Managing, developing and
18 planning time and territory for
19 optimum productivity and results."

20 Do you see that?

21 A Yes.

22 Q Is that what you did as a pharmaceutical
23 sales representative?

24 A Among other things.

25 Q All right. The third bullet point says:

Buchanan, Frank 4/23/2009 9:40:00 AM

1 "Proven ability to develop and
2 execute marketing programs that
3 contribute to business growth."

4 My question is, by "business growth," do
5 you mean increased sales of GSK products?

6 MS. CROCKETT: Form.

7 THE WITNESS: Yeah. There's some things
8 there. I mean, that would be one of them. Sure.

9 BY MS. SHAD:

10 Q All right. Focusing specifically further
11 down the page, where you talk about your
12 "respitar-" -- respiratory sales representative
13 position with GlaxoSmithKline, the first paragraph
14 there starts with "Develop."

15 Do you see where I am?

16 A Yes.

17 Q It says:

18 "Develop and manage sales
19 territory with responsibility for
20 marketing and selling respiratory
21 product portfolio to allergists,
22 pulmonologists, pediatricians and
23 family medicine physicians in the
24 Phoenix area."

25 That's what you did; correct?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A It's what I stated on the resume.

2 Q Did you misrepresent what you did when you
3 submitted your resume to Schering-Plough?

4 A No.

5 Q Okay. So what you stated on here is, in
6 fact, what you did; correct?

7 A To the same extent that I explained before,
8 sure.

9 Q So I'm struggling with this, Mr. Buchanan.

10 Are you telling me that you were willing to
11 say on your application, on your resume, whatever
12 you needed to say to get the job, regardless of
13 whether it was true or not?

14 A No. I didn't say anything like that. I
15 can amplify what I mean.

16 In -- in the pharmaceutical arena, this is
17 very standard verbiage. As a matter of fact, I'm
18 pretty sure I probably pulled that out of a job
19 posting somewhere for -- within -- within the
20 position for Schering-Plough.

21 When you talk about sales in the pharma
22 industry, it -- that's the nomenclature that you
23 would use. Those are the words you would use for
24 sure.

25 Q Okay. Well, my question to you is really

Buchanan, Frank 4/23/2009 9:40:00 AM

1 more simple than that. And that is, when you stated
2 on your resume that you submitted to Schering-Plough
3 for a job --

4 A Correct.

5 Q -- that you developed and managed sales
6 territory with responsibility for marketing and
7 selling respiratory product portfolio to allergists,
8 pulmonologists, pediatricians, and family medicine
9 physicians in the Phoenix area, were you being
10 truthful?

11 A Absolutely.

12 Q In that same paragraph, you went on to
13 state that you conducted "sales presentations in the
14 physician office setting, promotional programs and
15 therapeutic conventions." Did I read that
16 correctly?

17 A Yes.

18 Q And were you truthful when you said that in
19 your resume?

20 A I am.

21 MS. CROCKETT: I'm going to object on form.

22 BY MS. SHAD:

23 Q When you look further down the page,

24 Mr. Buchanan, there's a section entitled "Results."

25 A Uh-huh.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q The market share is still based on sales of
2 product?

3 A It absolutely is.

4 Q All right.

5 A But market share is a differ- -- you're
6 talking -- but -- I think what you're talking about
7 is volume of sales. If you sell --

8 Q Some of what you sold was volume measured;
9 correct?

10 MS. CROCKETT: Form.

11 THE WITNESS: At one point.

12 BY MS. SHAD:

13 Q Okay. And in that instance, a physician
14 writing more prescriptions than he or she had in the
15 past directly contributed to the increased volume of
16 GSK's sales of its product; correct?

17 A For that individual example, yes.

18 Q All right.

19 A I think in five years with GlaxoSmithKline
20 and eight to ten products I sold I think one for
21 maybe one quarter or two at the most was based on
22 volume. It was -- it was almost always exclusively
23 market share gain.

24 Q Your objective as a pharmaceutical sales
25 representative for GlaxoSmithKline was to convince

Buchanan, Frank 4/23/2009 9:40:00 AM

1 prescribers that the benefits of GSK's products
2 warranted them prescribing that product to the
3 appropriate patient; correct?

4 A That is correct.

5 Q All right. And your goal was to get
6 physicians to write more prescriptions for the
7 products you had in your portfolio; correct?

8 A That is correct.

9 Q Back to Exhibit 2, which is your resume
10 submitted to Schering-Plough, if you go back under
11 the "Results" section, the third bullet down states:

12 "Successfully drove Wellbutrin XL
13 through the P&T committee process to
14 gain formulary Coverage on NARBHA
15 2005." Did I read that correctly?

16 A Yes.

17 Q Tell me what it means to "drive
18 Wellbutrin XL through the P&T committee process to
19 gain formulary coverage."

20 A In today's pharmaceutical environment, the
21 greatest driver of whether or not a drug is
22 prescribed or not is its formulary coverage on
23 insurance plans. Wellbutrin XL was a drug that I
24 had for two years. It was exceptionally difficult
25 to sell because formulary coverage was almost

Buchanan, Frank 4/23/2009 9:40:00 AM

1 nonexistent.

2 A patient -- if the doctor were to actually
3 prescribe it, the patient would have to pay more
4 than \$100 at the pharmacy to get it. There were
5 other drugs that could do the same thing. I came up
6 with a strategy with my boss to get NARBHA to put
7 form- -- Wellbutrin XL on its formulary.

8 It took about 18 months, and it worked.
9 They finally did add it to their formulary, and then
10 I was reassigned to Phoenix, but that's what that's
11 stating.

12 Q Okay. And you considered that to be a
13 major achievement for you?

14 A Without a doubt, that is a big achievement.

15 Q All right. And getting that product
16 through the P&T committee process onto the formulary
17 caused your business to grow; correct?

18 A I would assume. To be honest with you,
19 after the change was made, I left a short time later
20 and didn't see that data; but I would assume so.

21 Q Okay. Would you go back up to the
22 paragraph above the "Results" section. It indicates
23 there that you served the team as a "district
24 analyst, regional associate trainer, and field
25 development trainer."

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q -- whether he asked you to do it or whether
2 you did on your own, that was something that you
3 thought was valuable to you and your team in getting
4 more prescriptions written; correct?

5 A That is correct.

6 Q What did you do as a regional associate
7 trainer?

8 A I did several things. I would aid in
9 new -- new-hire training. I would "contuck" --
10 conduct facilitations of -- of different phases of
11 training. Sometimes that required traveling.

12 I would roll out facilitation sessions and
13 product launches, regional meetings.

14 I'd ride with new-hire candidates in the
15 field and aid them in -- in what to expect, going
16 into an office kind of right out of training.
17 People who don't have a lot of experience really at
18 all in sales, pharmaceuticals sales specifically,
19 don't know what to expect.

20 You know, that was -- I had a lot of good
21 experience to do that, coming from a traditional
22 sales world into what they called pharma sales to
23 help them with that.

24 A lot of the things you're trained to do in
25 new-hire training are not applicable in the field,

Buchanan, Frank 4/23/2009 9:40:00 AM

1 get you kicked out of offices; so you have to work
2 with trainees to help them acclimate themselves.

3 Q So, in your view, the -- I think you just
4 said a lot of the training you received during the
5 formal training doesn't serve you well in the field.
6 You have to adjust to what the realities out in the
7 field are?

8 A To some extent.

9 Specifically, what I mean is they -- they
10 train very, very hard for what they call their
11 close, which is "Doctor, will you prescribe said
12 product for your next ten patients."

13 Typically, if you do that in a doctor's
14 office, they will throw you out, and you will not be
15 welcome back ever again; so you reach the point
16 where asking for the business most likely is going
17 to get you thrown out.

18 So, you know, that -- that was my greatest
19 concern as a trainer that you wouldn't really go and
20 do that because, if you go in -- that's what you
21 would do -- that's what I would do at Qwest. At the
22 end of a call, I'd ask them, "Are you going to buy
23 the cell phone? Yes or no." If they do, great,
24 let's do an order.

25 You do that in the pharma world, and

Buchanan, Frank 4/23/2009 9:40:00 AM

1 doctors typically do not tolerate that.

2 Q There are other sorts of commitments to
3 gain besides just committing to write a prescription
4 for the next 12 patients; correct?

5 A There's a lot -- there are a lot of
6 commitments that you get, you know, as far as -- you
7 know, kind of getting back to the whole marketing
8 sales things; right. You get a lot of commitment
9 for things that don't involve writing prescriptions;
10 that's correct.

11 Q But a lot of the commitments you ask for
12 are designed to get a physician ultimately to the
13 interest point of writing more prescriptions;
14 correct?

15 A Hopefully. That's your goal. You hope
16 that.

17 Q These things -- the district analyst, the
18 regional associate trainer, the field development
19 trainer -- those were things that you did while
20 doing your pharmaceutical sales representative job?

21 A That's correct.

22 Q Okay. Did you ever go to Franklin Plaza or
23 RTP and participate in new-hire training as a
24 trainer?

25 A No.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 representative that you were making \$67,000 a year

2 at GSK when you were not?

3 A I don't recall.

4 Q The next line, line 7 on page 1 of

5 Exhibit 3, you were asked what your target or bonus

6 incentive -- target bonus or incentive was at GSK,

7 and you indicated a target of \$21,000; correct?

8 A Correct.

9 Q That was uncapped; right?

10 A To my knowledge, yeah, it was uncapped.

11 Q And you, in fact, earned more than \$21,000

12 in bonus when you worked for GSK annually?

13 A I think I did, yeah.

14 Q All right. And is it accurate, as stated

15 here on Exhibit 3 -- 3, line 8, that your actual

16 bonus in 2007 was \$26,000?

17 A Yeah. I don't know if that's accurate.

18 That may have been an estimation at the time, but

19 I -- I don't remember.

20 Q Line 10, you were asked "Do you have a

21 sales quota?" and the answer indicated there is

22 "finished at 120%."

23 Can you explain what that means, "finished

24 at 120%"?

25 A That the market share goal for one of my

Buchanan, Frank 4/23/2009 9:40:00 AM

1 were copied on that subpoena.

2 MS. SHAD: We'll check on that in a break

3 and -- and get back to you --

4 MS. CROCKETT: Okay.

5 MS. SHAD: -- but I believe that you were.

6 MS. CROCKETT: Okay. All right. Thank

7 you.

8 BY MS. SHAD:

9 Q Mr. Buchanan, do you receive overtime pay

10 at Schering-Plough?

11 A No.

12 Q Have you raised with anyone at

13 Schering-Plough this notion that, as a

14 pharmaceutical sales representative at

15 Schering-Plough, you're entitled to be compensated

16 for any hours in excess of 40 per week that you

17 work?

18 A No.

19 Q Why not?

20 A I took a substantial increase in pay coming

21 to -- from GlaxoSmithKline to Schering-Plough. I

22 feel it envelopes the hours I spend doing the job.

23 Q What did you make -- what was your -- what

24 was your total compensation at Schering-Plough in

25 2008?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A I don't know right offhand.

2 Q Was it more or less than you earned at

3 GlaxoSmithKline in 2007?

4 A More.

5 Q More by how much?

6 A I'm trying to think. I think I received

7 two quarterly commission payouts in 2008 from

8 Schering-Plough; so I would -- if I had to ballpark,

9 I would say I made somewhere around \$80,000.

10 Q So I'm sorry. You said you made somewhere

11 around \$80,000 in 2008?

12 A That would be my guess.

13 Q With Schering-Plough?

14 A Correct.

15 Q Okay. And what do you think you made in

16 2007 with GSK?

17 A I would guess somewhere under 70,000.

18 Q How far under 70,000?

19 A I'm not sure exactly.

20 Q Well, your -- your last salary was 56,8.

21 We've already decided that; correct?

22 A Yes.

23 Q Are you saying you earned less than \$14,000

24 in bonus in 2007?

25 A Yeah. I don't -- I don't think I made full

Buchanan, Frank 4/23/2009 9:40:00 AM

1 payout by any means, no.

2 Q We looked at a document earlier, where you
3 indicated you had earned \$26,000 in compensation.

4 A Correct.

5 Q You told Schering-Plough that; correct?

6 A Correct.

7 Q And that was false?

8 A I don't know.

9 Q Well, you just said that it wasn't payout.
10 Payout was 21. You said it was less than 21;
11 correct?

12 A Yeah. I'll clarify. I really don't know.
13 I don't have the documents in front of me. My
14 accountant would know.

15 Q Your tax returns will show us?

16 A Correct.

17 Q Well, if the law says that you're entitled
18 to be paid overtime, is it up to you to decide
19 whether or not you should get overtime?

20 MS. CROCKETT: Form.

21 THE WITNESS: That'd be great.

22 BY MS. SHAD:

23 Q What would be great?

24 A If it was up to me.

25 Q I'm still trying to get a grip on why you

Buchanan, Frank 4/23/2009 9:40:00 AM

1 haven't raised this issue with Schering-Plough.

2 A I took a significant increase in pay when I
3 went from GlaxoSmithKline to Schering-Plough. When
4 I had a grasp of what the job required, I felt that
5 be would fair.

6 Q How many hours a week do you work at
7 Schering-Plough?

8 A I'd estimate about 50 a week.

9 Q You're aware that there is a lawsuit
10 similar to the one you filed against GlaxoSmithKline
11 against Schering-Plough, are you not?

12 A I do not know that.

13 Q So is what you're telling me with respect
14 to why you have not raised this issue of overtime
15 with Schering-Plough that, if your salary is enough,
16 you don't care about the overtime?

17 A I'm -- what I'm saying is I took a
18 significant increase in pay. I felt, knowing what
19 the job required, that it was fair.

20 Q Are you taking a vacation day or personal
21 day today to be here?

22 A I am.

23 Q Does your district manager know that you're
24 here giving deposition --

25 A No.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q -- in this case?

2 A No.

3 Q Is your manager or anyone in management --
4 your management chain at Schering-Plough aware that
5 you are a plaintiff in this lawsuit?

6 A No.

7 Q Have you discussed the fact that you're a
8 plaintiff in this lawsuit against GlaxoSmithKline
9 with anyone at Schering-Plough?

10 A No.

11 Q Have you received any raises since you
12 joined Schering-Plough?

13 A Yes.

14 Q When?

15 A Roughly six weeks ago.

16 Q And what was the amount of your raise?

17 A \$700 on my base pay.

18 Q And so what is your base salary now?

19 A \$70,700.

20 Q How does Schering-Plough determine what
21 incentive compensation you will receive?

22 A Based on increase in market share.

23 Q Similar to how it was done at
24 GlaxoSmithKline?

25 A Similar.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q What is the target payout for bonus at

2 Schering-Plough?

3 A 21,000, approximately.

4 Q Same as at GlaxoSmithKline?

5 A Correct.

6 Q Is that capped or uncapped?

7 A It's uncapped.

8 Q Is it paid quarterly?

9 A It is.

10 Q Same as at GlaxoSmithKline?

11 A No. It's paid -- it's paid much sooner.

12 Glaxo there was a three- to four-month delay at the

13 end of the quarter; and at Schering-Plough, it's

14 about eight weeks when I get paid.

15 Q So at GlaxoSmithKline your testimony is you

16 received your bonus for the quarter four months

17 after the quarter ended?

18 A Three to four months after; correct.

19 Q And at Schering-Plough, you receive it two

20 months after the quarter ends?

21 A Correct.

22 Q Have you exceeded your quarterly incentive

23 compensation goal while employed by Schering-Plough?

24 A I did for summer. I was realigned and did

25 not in -- for winter.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q Have you ever been the subject of any
2 discipline while employed by Schering-Plough?

3 A No.

4 Q Have you applied for any employment since
5 accepting employment with Schering-Plough?

6 A No.

7 Q When you joined GlaxoSmithKline in 2003,
8 what was your territory initially?

9 A Northern Arizona.

10 Q Can you be a little bit more specific.
11 What -- what --

12 A I covered the geography of the entire
13 northern part of the state; so as far west as
14 Bullhead City and Lake Havasu, as far east as
15 St. John's, as far north as Page, and as far south
16 as Cottonwood.

17 Q So how many miles wide and how many miles
18 tall was your territory, approximately?

19 A Miles, I don't know. Six hours wide
20 driving time, and it was almost four hours long.

21 Q And would you go to certain parts of your
22 testimony each week?

23 A Correct.

24 Q Did you spend nights away from home?

25 A I did.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q How often would you say you did that?

2 A I would do two nights on the road one week

3 and then the following week, one night.

4 Q Did your territory remain the same until

5 you moved to Phoenix and got that territory that you

6 described earlier?

7 A Somewhat. The first -- when we moved to

8 Phoenix for about six months, I covered that

9 territory from Phoenix, and then the transfer came

10 through in July -- July of '06? Is that right?

11 And then I covered -- I covered the valley.

12 Q So when you were living in Phoenix and

13 covering the Northern Arizona territory, how far

14 away did you live from your territory?

15 A 200 miles, approximately.

16 Q So tell me how you covered that territory.

17 Did -- did you go live in the territory during the

18 week and come home on weekends?

19 A I did.

20 Q Was that the case every week five days a

21 week?

22 A For the most -- excluding a vacation day

23 here and there, yes.

24 Q Okay. And that lasted for how long?

25 A Approximately six months. Moved to Phoenix

Buchanan, Frank 4/23/2009 9:40:00 AM

1 in January, and my transfer was official July 1st;
2 and then they asked me to continue to cover the
3 river, which would be Bullhead City and Lake Havasu,
4 for another three months until September when those
5 Vegas reps came online and started covering the
6 river.

7 Q And when you got your new territory
8 starting in July of '06, were you required to spend
9 nights away from home in -- to cover that territory?
10 Not talking about continuing to cover the river for
11 that three-month period; but for your new territory,
12 did you spend the night away from home or not?

13 A Not for call activity, no.

14 Q Okay. For what other reasons did you?

15 A My position as a trainer, I traveled to
16 Salt Lake and Dallas to -- to facilitate training.
17 Sometimes they were a couple of days, sometimes a
18 week. I covered a conference in San Francisco.

19 It was -- it was sporadic. It wasn't
20 anything real consistent.

21 Q When were you trained as a trainer?

22 A I'm really not sure.

23 Q Can you give me a year.

24 A I would guess 2006. That's a guess.

25 Q And where did you go to be trained as a

Buchanan, Frank 4/23/2009 9:40:00 AM

1 trainer?

2 A I went to Research Triangle Park,

3 North Carolina.

4 Q How long was the training you went through?

5 A It was a week.

6 Q And once you went through that training,

7 what training did you then turn around and provide?

8 A I did a Phase 2 training in Salt Lake City.

9 I did several sessions at a regional

10 meeting shortly thereafter.

11 I did some local trainings for our

12 district.

13 Q Anything else?

14 A Not -- not that's coming to mind right now.

15 Q Okay. When you say you did Phase 2

16 training in Salt Lake City, what -- what -- Phase 2

17 of what?

18 A Phase 2 initial higher training.

19 Q Okay. And tell me what you did in that

20 capacity.

21 A Facilitated training sessions throughout

22 the day on various software applications that we use

23 for the job, clinical reprint presentation.

24 Q So you trained new reps on how to use

25 clinical reprints?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 that's -- that's it for now.

2 Q Okay. Let me ask you to take a look at
3 Exhibit 4, and there's a copy there for your counsel
4 as well.

5 A Sure.

6 (The document referred to was marked as
7 Buchanan Exhibit 4 by the Reporter.)

8 Q And, Mr. Buchanan, what I've handed to you
9 is a list of GSK products promoted since
10 August 14th, 2005; and my question for you is if you
11 would just take a look at that and go through and --
12 and identify the products that you at any time
13 during your employment with GlaxoSmithKline were
14 responsible for.

15 A Okay. I sold Advair, Altabax, Amerge,
16 Boniva, Flonase, Flovent, Imitrex, Ventolin,
17 Veramyst, Wellbutrin.

18 That's it.

19 Q Okay. Which of those products did you sell
20 when you were responsible for the Northern Arizona
21 territory?

22 A Sold Wellbutrin, Advair, Imitrex, Boniva.

23 And that's it.

24 Q All right. And which products were you
25 responsible for when you took over the territory in

Buchanan, Frank 4/23/2009 9:40:00 AM

1 ride-along with a gal from Merck that I knew from
2 Research. And, oh, the other one was Ortho McNeil.

3 Q So you did -- you did multiple ride-alongs
4 with each of them, or did you do one with each?

5 A Just one with each.

6 Q All right. And what you observed them
7 doing on the days that you road along with them, is
8 that similar to what you did when you first became a
9 GSK pharma sales rep?

10 A Similar, yes.

11 Q How did you learn about the opening at
12 GlaxoSmithKline?

13 A Monster.com.

14 Q And was it advertised as a pharmaceutical
15 sales rep position?

16 A I don't remember. I would assume. I don't
17 know.

18 Q Did you understand that GlaxoSmithKline was
19 looking for people with prior sales experience?

20 A Yes.

21 Q Are you familiar with something called the
22 "Sales Book of Opportunities" at GlaxoSmithKline?

23 A I'm not sure. Maybe if I saw --

24 Q I'll -- I'll show you a document.

25 A Okay.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q Show you what's been marked Exhibit 5.

2 There's an extra copy there.

3 (The document referred to was marked as

4 Buchanan Exhibit 5 by the Reporter.)

5 BY MS. SHAD:

6 Q Is this document familiar to you?

7 A It's not familiar to me. I mean, it's --

8 looks like something that got taken out of a job

9 description book or something.

10 Q Well, take a look through it, if you would;

11 and my question for you is going to be does the job

12 described on Exhibit 5 -- is -- is that essentially

13 what you applied for back in 2003, in essence?

14 A Yeah. I really -- I don't know. I mean,

15 if I was presented with this, I don't remember it at

16 all.

17 Q Well, do you recall seeing any description

18 of the pharmaceutical sales representative job

19 before you applied?

20 A Yeah. I'm sure there's one online.

21 Q Okay. Well, does what's on Exhibit 5 look

22 to you to be like what you saw when you applied or

23 before you applied?

24 A I don't remember.

25 Q All right. Well, take a look at it and

Buchanan, Frank 4/23/2009 9:40:00 AM

1 just tell me if there's anything, particularly under
2 "Key Responsibilities." There are 14 listed. Is
3 there anything on there that you did not understand
4 you would be expected to do when you took the job
5 with GSK in 2003?

6 A I can tell the only thing I didn't know is
7 how long all this was going to take. I can tell you
8 that.

9 Q Okay. So your testimony is that these key
10 responsibilities listed on Exhibit 5, Nos. 1 through
11 14, you were aware that, as a GlaxoSmithKline
12 pharmaceutical sales rep, you would be expected to
13 do those things. You just didn't realize how much
14 time it would take to do them.

15 A I don't know if I -- no. Before taking the
16 job, I don't know if I knew all of these things. I
17 can't state that.

18 Q Well, what on here did you not know that
19 you were going to expected to do?

20 A I honestly can't remember from eight years
21 ago what I remember about what I knew about the job
22 before I took it and what I didn't.

23 Q Okay. Well, are these things, 1 through
24 14, things that you actually were expected to do
25 once you started work?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A Yes.

2 Q Is there anything on the list of 14 that
3 you were not expected to do?

4 A No.

5 Q All right. Did you think that your prior
6 sales experience at Qwest would help you --

7 A Yes.

8 Q -- perform satisfactorily as a
9 pharmaceutical sales representative?

10 A Yes.

11 Q Do you recall, from the interview
12 process -- interview and selection process back in
13 2003 with GSK, any discussion with anybody around
14 how much time it would take you to do the job on a
15 weekly basis?

16 A No.

17 Q Did you ask that question?

18 A I don't remember.

19 Q The friends of yours who were working as
20 pharmaceutical sales reps for other companies in
21 positions similar to the one that you accepted with
22 GSK, did you have a sense from them how much time
23 they spent working in their job?

24 A No.

25 Q Not something you asked?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 that number represents internally at GSK; correct?

2 A I don't.

3 Q You understood, when you accepted the job
4 at -- at GSK, that you would also receive incentive
5 compensation?

6 A Correct.

7 Q And you understood that it was uncapped?

8 A Correct.

9 Q And that was important to you, I presume?

10 A Absolutely.

11 Q All right. An attractive part of the --
12 the job that you had, in theory anyway, unlimited
13 earning potential?

14 A Right. That -- unlimited is -- is what
15 you're sold. It's not really the reality. It's
16 exceptionally diminishing returns.

17 Q What do you mean by that?

18 A I guess the best example would be, if
19 you -- if you increased your market share 110
20 percent of goal, you would receive, say, an extra
21 \$2,500 in commission. But if you increased it
22 another 40 percent -- if you were 150 percent of
23 goal -- you'd receive maybe \$3,700 additional.

24 So, you know, uncapped is -- is accurate as
25 far as by the -- by the term. What it means in

Buchanan, Frank 4/23/2009 9:40:00 AM

1 dollars -- you never really wanted to pace more than
2 110 or 112 percent of goal because then the dollar
3 amount that you get for each percentage point you're
4 over goes down significantly.

5 Q So are you saying that, once you hit a
6 certain percentage above goal, it didn't make sense
7 to you to spend your time trying to get it higher
8 because you weren't going to earn any more money for
9 the effort?

10 A Correct. Or not enough for the effort.

11 Q Okay.

12 A Yet conversely on the other side, if you
13 were 2 percent short of goal, you only got half your
14 commission. It wasn't -- it was not grad- -- it was
15 graduated. It wasn't in direct relationship to
16 itself.

17 Q So as a GSK pharmaceutical sales rep, you
18 could earn as incentive compensation anywhere
19 between zero and somewhere above \$21,000?

20 A Correct.

21 Q And how much you earned was based, in large
22 part, on how hard you worked; correct?

23 A To some extent, that's true. There's a lot
24 of holes in that theory. There's -- there's
25 definitely a relationship between effort and

Buchanan, Frank 4/23/2009 9:40:00 AM

1 commission. There's just a lot of other factors
2 that come into play.

3 Q Okay. It sounds like, Mr. Buchanan, when
4 you describe your approach at Schering-Plough and
5 your approach when you accepted employment at -- at
6 GlaxoSmithKline, if you're paid enough for an amount
7 that you think is fair for your effort, then you
8 don't care one way or the other about the overtime.
9 It's just, if you're paid enough for what you're
10 doing, in your mind, then that's sufficient. Is
11 that accurate --

12 A I think it's probably accurate for anyone,
13 yeah.

14 Q Let me show you what we've marked as
15 Exhibit 6.

16 There's an extra copy there as well.

17 (The document referred to was marked as
18 Buchanan Exhibit 6 by the Reporter.)

19 BY MS. SHAD:

20 Q Mr. Buchanan, what I've handed you as
21 exhibit -- marked as Exhibit 6 is a copy of the
22 employment application you submitted online, I
23 believe, to -- to GlaxoSmithKline.

24 Can you take a look through. It's 16
25 pages. Just take a look through, and let me know if

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A I didn't click -- I didn't click "Current."

2 MS. SHAD: All right. Can you mark this
3 one.

4 (The document referred to was marked as
5 Buchanan Exhibit 7 by the Reporter.)

6 BY MS. SHAD:

7 Q I'm handing you now what is marked as
8 Exhibit 7.

9 There's an extra copy there too.

10 Okay. Mr. Buchanan is -- is Exhibit 7 a
11 copy of a letter to you, dated August 19th, 2003,
12 from GlaxoSmithKline, which is essentially your
13 offer letter?

14 A It appears so.

15 Q All right. And it reflects that your
16 initial base salary with GSK was \$49,600?

17 A Correct.

18 Q And your incentive comp target was \$21,000?

19 A Correct.

20 Q And if you turn to the second page of
21 Exhibit 7, down near the bottom, there's a paragraph
22 entitled "Sales Training."?

23 A Yes.

24 Q And you understood, then, did you not, that
25 as a condition of your continued employment with

Buchanan, Frank 4/23/2009 9:40:00 AM

1 GlaxoSmithKline, you would have to successfully
2 complete sales training as set forth in this
3 paragraph?

4 A Yes.

5 Q Now, with respect to the new-hire training
6 that you took in 2003, where did you take that
7 training?

8 A In Atlanta, Georgia.

9 Q All right. Was there home study in advance
10 of actually going to Atlanta?

11 A There was.

12 Q How long was the home study?

13 A I think it was approximately a month.

14 Q Was it four weeks?

15 A Sounds right.

16 Q All right. And you did that from your
17 home?

18 A Yes.

19 Q And then how long was the training in
20 Atlanta?

21 A I believe it was three and a half weeks.

22 Q All right. Was there -- were there -- were
23 there two faces to this training? Is -- like what
24 you described when you were the training trainer?

25 A There was.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A I didn't click -- I didn't click "Current."

2 MS. SHAD: All right. Can you mark this
3 one.

4 (The document referred to was marked as
5 Buchanan Exhibit 7 by the Reporter.)

6 BY MS. SHAD:

7 Q I'm handing you now what is marked as
8 Exhibit 7.

9 There's an extra copy there too.

10 Okay. Mr. Buchanan is -- is Exhibit 7 a
11 copy of a letter to you, dated August 19th, 2003,
12 from GlaxoSmithKline, which is essentially your
13 offer letter?

14 A It appears so.

15 Q All right. And it reflects that your
16 initial base salary with GSK was \$49,600?

17 A Correct.

18 Q And your incentive comp target was \$21,000?

19 A Correct.

20 Q And if you turn to the second page of
21 Exhibit 7, down near the bottom, there's a paragraph
22 entitled "Sales Training."?

23 A Yes.

24 Q And you understood, then, did you not, that
25 as a condition of your continued employment with

Buchanan, Frank T. 4/23/2009 12:00:00 PM

1 GlaxoSmithKline, you would have to successfully
2 complete sales training as set forth in this
3 paragraph?

4 A Yes.

5 Q Now, with respect to the new-hire training
6 that you took in 2003, where did you take that
7 training?

8 A In Atlanta, Georgia.

9 Q All right. Was there home study in advance
10 of actually going to Atlanta?

11 A There was.

12 Q How long was the home study?

13 A I think it was approximately a month.

14 Q Was it four weeks?

15 A Sounds right.

16 Q All right. And you did that from your
17 home?

18 A Yes.

19 Q And then how long was the training in
20 Atlanta?

21 A I believe it was three and a half weeks.

22 Q All right. Was there -- were there -- were
23 there two faces to this training? Is -- like what
24 you described when you were the training trainer?

25 A There was.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 you would go out on your own; but others, you'd be
2 with someone?

3 A I think, in six weeks total, I had four
4 days that somebody was with me.

5 Q All right. Okay. And the training --
6 we -- we talked about this training earlier this
7 morning. I don't want to go over all that again.
8 But there was product-specific training that you
9 received?

10 A Correct.

11 Q And there was training that was specific to
12 actually selling the products; correct?

13 A Correct.

14 Q And would you agree that during your
15 training you were told that, as a pharmaceutical
16 sales rep, you would be expected to increase the
17 amount of GSK product prescriptions written in your
18 territory?

19 A Market share, yes.

20 Q Okay. You were told that you would be
21 expected to engage in discussion and dialogue with a
22 doctor about why GSK products would be effective for
23 a particular type of patient; correct?

24 A That is correct.

25 Q You all in the training use the word

Buchanan, Frank 4/23/2009 9:40:00 AM

1 "customer," did you not?

2 A Yeah. Sometimes. Sure.

3 Q Okay. And customer in that context

4 referred to the physician; correct?

5 A Sometimes. Sometimes the office staff is

6 called that.

7 Q Okay.

8 A Depending on the point of the exercise.

9 Q The customer within your training was

10 either the actual prescriber or someone in the

11 office who could influence the prescriber; correct?

12 A Correct.

13 Q And you were also trained to provide the

14 healthcare provider with medical literature approved

15 by the company?

16 A Correct.

17 Q And one of the important things that a

18 pharmaceutical sales representative does is actually

19 engage in discussion and conversation with a

20 prescriber; correct?

21 A Correct.

22 Q And would you agree that that was something

23 that you were particularly effective at doing?

24 A Sure.

25 Q And I think we've covered this before, but

Buchanan, Frank 4/23/2009 9:40:00 AM

1 you were also told in your training and actually did
2 in your day-to-day work that you needed to get
3 commitments from physicians as best you could to
4 actually prescribe GSK's products?

5 A Yeah. They called it "gaining the best
6 possible commitment."

7 Q Basically asking for the business in a way
8 that you were comfortable doing?

9 A Asking for whatever you could get, to be
10 honest with you. Sometimes it was getting an
11 agreement they'd see you again. Getting an
12 agreement to use the samples you've left, things of
13 that nature.

14 Q Okay. And again with the goal -- the
15 ultimate goal being to get that physician to
16 prescribe the product?

17 A That's what we're after.

18 Q Right.

19 Once you were out in the field working as a
20 pharmaceutical sales representative, you were
21 responsible for figuring out what your objective was
22 on each call you made; correct?

23 A We'd set a goal for each call. Sure.

24 Q Okay. You -- you would set a goal for the
25 calls you were going to make?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A Yeah.

2 (Off the record. The video continued to

3 run.)

4 BY MS. SHAD:

5 Q At some point in your five years with GSK,

6 you were promoted?

7 A Correct.

8 Q And were your duties essentially the same

9 in the promoted position as they were in the first

10 position?

11 A Identical.

12 Q Okay. Do you recall something called an

13 "ACES Program"?

14 A I do.

15 Q Tell me what that was.

16 A It was a program for Wellbutrin XL.

17 Physicians received a certain number of vouchers

18 that they could give their patients for free

19 prescriptions of Wellbutrin, and I believe it was

20 five. And that was something that we went around

21 and tried to get them to utilize.

22 MS. SHAD: Let's go ahead and mark this.

23 Where are we at? What number?

24 THE REPORTER: 8.

25 THE WITNESS: Thank you.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 description of how you did that?

2 A Correct.

3 Q Correct?

4 A Uh-huh.

5 Q What was the purpose of the ACES Program?

6 A It was an opportunity for doctors to give
7 medicine to patients at no cost. And they, in turn,
8 could monitor their progress based on surveys that
9 the patients completed; and then those surveys were
10 sent back to the physicians.

11 Q All right.

12 A If I remember right.

13 Q Okay. And at the bottom of the first page
14 of Exhibit 8, which is where your response to
15 Mr. Schwartz is -- do you see that? --

16 A Yes.

17 Q -- you say:

18 "Mark, per Joe's request, I am
19 passing on some of the things I have
20 been doing with the Aces Program to
21 generate success."

22 And then below that, you list a number of
23 things that carry over to the next page.

24 A Correct.

25 Q All right. And one of the things that you

Buchanan, Frank 4/23/2009 9:40:00 AM

1 state that you did with respect to the ACES Program
2 was that you "evaluated prospective physicians by
3 total" -- "by total antidepressant prescriptions and
4 WXL volume."

5 Is that Wellbutrin XL?

6 A Yes.

7 Q All right. And then:

8 (Reading) Physicians with a high
9 antidepressant prescription count and
10 low Wellbutrin XL counts were the
11 physicians I considered to be better
12 opportunities. In my opinion, these
13 physicians hadn't been sold on
14 Wellbutrin XL as an antidepressant
15 and would be more willing to try it
16 with the followup offered in the ACES
17 Program.

18 Did I read that correctly?

19 A Yes.

20 Q Okay. So this ACES Program is a way to get
21 physicians to begin prescribing Wellbutrin more;
22 correct?

23 A Correct.

24 Q All right. And your approach to the
25 physicians that you called on was an approach that

Buchanan, Frank 4/23/2009 9:40:00 AM

1 you developed on your own?

2 A Yeah.

3 Q Okay. And you had some success with that;

4 correct?

5 A Yeah. It wasn't difficult to sell free

6 medicine.

7 Q If you continue to read through the email,

8 it is maybe the third or four point that you make.

9 There is a paragraph that starts:

10 "I also made a strong point of

11 the fact that I could only choose a

12 limited number of physicians to

13 participate."

14 Do you see where I am?

15 A I do.

16 Q You go on to say:

17 "I would also make a strong point

18 that I chose their office

19 specifically because of the quality

20 of their operation and my" con- --

21 "confidence in their ability to

22 target patients."

23 Did I read that correctly?

24 A Yes.

25 Q So that's -- that's information that you

Buchanan, Frank 4/23/2009 9:40:00 AM

1 knew because you knew those physician practices and
2 what their operations were; correct?

3 A To some extent.

4 Q Well, that's what you say here anyway;
5 right?

6 A That was my way that I sold it to them. To
7 be honest with you, if their practice was in
8 shambles, I'd probably say the same thing to them to
9 get their buy-in.

10 Q Did you go to every practice and try to get
11 them to participate?

12 A No. I did exactly what I stated as far as
13 I targeted potential -- potential success based on
14 volume; so a doctor that only writes, say, one or
15 two antidepressants scripts a month, this will not
16 be somewhere where I'd present that.

17 Q So you exercised your judgment in deciding
18 which physician practices you would try to get
19 enrolled in the ACES Program?

20 MS. CROCKETT: Form.

21 THE WITNESS: I would pick off of our
22 target list, yeah.

23 BY MS. SHAD:

24 Q Right.

25 But -- but you're the one who picked off

Buchanan, Frank 4/23/2009 9:40:00 AM

1 the target list. Nobody said to you, "Pick these
2 people off this list --

3 A No.

4 Q -- for this program"?

5 A No.

6 MS. SHAD: That will be the next one. What
7 number is it?

8 THE REPORTER: 9.

9 (The document referred to was marked as
10 Buchanan Exhibit 9 by the Reporter.)

11 BY MS. SHAD:

12 Q Mr. Buchanan, I've handed you what's been
13 marked Exhibit 9 and will represent to you that it
14 is a copy of your training record while at GSK.

15 Can you just take a look at that, and let
16 me know if you see anything on here that makes you
17 think it's not correct.

18 A No.

19 Q As far as you know, sitting here today, you
20 took each of these training sessions as listed on
21 Exhibit 9?

22 A Yeah. I would -- I would assume.

23 Q Were all of them mandatory or some of them
24 ones you chose to take for your own self-education
25 or for some other reason?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A A vast majority of these would be
2 mandatory.

3 Sometime at regional meetings, they'd give
4 us a choice. Like, you'd have an elective, if you
5 will, and I'd pick one of those, trying to see if
6 any of these are train the trainer or anything like
7 that.

8 The -- that would be something that I would
9 elect, but it looks like these are all -- actually,
10 I forgot about certified VESicare.

11 No. These are all required trainings.

12 Q Okay. You're saying everything on this
13 list is required?

14 A To my understanding, yes.

15 Q And you were never trained on products that
16 you never were responsible for; correct?

17 A No. Ironically, I would train on products
18 that I wasn't trained on, but I never -- I never
19 certified for products I didn't sell.

20 Q You did -- are you saying -- are you
21 telling me you did product training on products --

22 A Sometimes.

23 Q -- that you didn't -- were not trained on?

24 A Sometimes.

25 Q Tell me when that happened.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A There was times at the -- at the district
2 level, I'd help out the Avandia guys, you know, with
3 the clinical reprint or something of that extent.

4 Q All right. You -- you were not the person
5 in charge of that training. You were just assisting
6 someone else who actually was a product specialist?

7 A No. Picture, like, sitting down in
8 Starbucks with five people and going over a clinical
9 reprint, kind of show them how to sell it.

10 Q Your focus was on how to use the reprint,
11 not on product knowledge, necessarily?

12 A Exactly; correct.

13 (The document referred to was marked as
14 Buchanan Exhibit 10 by the Reporter.)

15 BY MS. SHAD:

16 Q Okay. And you've got what's been marked as
17 Exhibit No. 10 and ask -- ask you is that an email
18 that you received regarding having won a -- a
19 contest related to Wellbutrin XL?

20 A It looks like it, yeah.

21 Q Well, do you recall winning a contest in
22 August of '05 with respect to Wellbutrin XL?

23 A Not offhand.

24 Q In the second paragraph, it states:

25 (Reading) To earn your award,

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q And, in fact, in terms of dollars, it turns
2 out that it's a fairly significant chunk of your
3 total compensation as a pharmaceutical sales
4 representative; correct?

5 A Correct.

6 Q Roughly a third while you were at GSK?

7 A It could be.

8 Q And you -- you were very motivated by your
9 compensation, by your incentive compensation;
10 correct?

11 A Yes.

12 Q And how did that play out? How did that
13 motivation by incentive compensation play out for
14 you in how you did your job?

15 A It was frustrating for me at first. I came
16 from a sales environment that increased effort
17 always led to increased dollars. I could track
18 sales. I could track how many sales I made.

19 From the skills I obtained at Qwest is I'm
20 very good at closing; so I'm able to close for
21 business at the end of the call and get someone to
22 sign on the dotted line.

23 So my first year in the field, my greatest
24 struggle was I thought, if I went out and worked --
25 if -- if 50 hours a week equaled 70,000 a year, I

Buchanan, Frank 4/23/2009 9:40:00 AM

1 as well as the territory level.

2 Q Okay. Well, tell me how -- how your
3 strategy would have been different if you had
4 received different sales figures.

5 A You base -- you base your -- when you --
6 you know, when I talked about a goal for a doctor
7 when you go in, you know, the sales aid has five
8 pages on it, each dealing with a different topic; so
9 you try and pick a part of that that would be
10 relevant for the doctor.

11 Success is 10 percent maybe to get a point
12 where they look at it and agree or -- or follow
13 that. They don't like the shiny pictures, I guess,
14 is my point.

15 But when you target physicians off of your
16 target list, you look at potential based on product
17 volume.

18 When that data is not accurate, then
19 targeting or goals, when you go in, would not have
20 been accurate.

21 Q So, in other words, if you had received
22 different data, it might have caused you to target
23 doctors differently or have different objectives on
24 your calls with them?

25 A Potentially.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 I don't have any reason to think it wasn't.

2 Q All right.

3 (The document referred to was marked as

4 Buchanan Exhibit 13 by the Reporter.)

5 BY MS. SHAD:

6 Q You have in front of you what's been marked

7 as Exhibit 13, which -- which is a different

8 InSight Quarterly Report. This one is summer 2005

9 for you.

10 Do you see that?

11 A Yes.

12 Q All right. Now, in the first top section

13 under "Winter," there's a column that says

14 "Product." And underneath "Product" it lists

15 Wellbutrin XL, Advair Asthma, Imitrex/Amerge. Are

16 those the three -- or the -- is Imitrex/Amerge two

17 different products?

18 A They are.

19 Q All right. So is it accurate to state, in

20 that winter quarter, you were responsible for those

21 four products?

22 A Correct.

23 Q All right. And then there's a column next

24 to "Product" that is entitled "Wt." Do you

25 understand that to be "weight"?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A Correct.

2 Q And how did that work?

3 A It's how the company assigned where you'd
4 put your priority, meaning Wellbutrin XL for me
5 represented 50 percent of my commission dollars;
6 Advair represented 30 percent; and Imitrex,
7 20 percent.

8 It's the way the corporation drove how
9 you -- how you went about doing your business.

10 Q So -- so if I understand you, then, the
11 weights assigned by the company to the different
12 products for which you were responsible influence
13 you in how you developed your -- basically your
14 strategy for going about selling those products?

15 A You would present the products in order
16 based on that; so whenever I saw a doctor, I'd
17 present Wellbutrin, Advair, and then Imitrex.

18 Q Did you present all products to all
19 physicians?

20 A Mostly. There was -- I mean, there was
21 always exceptions, but I'd at least get a product
22 mentioned for each one, yes.

23 Q Okay. And when Wellbutrin XL was your
24 No. 1 priority, if you got one product mentioned, it
25 would be Wellbutrin?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A No. What I'm saying is there -- there
2 are -- there's always exceptions. There's no
3 standard blanket that covers every call. I'd say a
4 vast majority of my calls I got mentioned -- at
5 least a mention on all three products; but, you
6 know, there are times that a doctor comes at you
7 with a pen and says, "I need to sign something" and
8 get out of there, and you have four seconds. So you
9 give a marketing message for Wellbutrin, and they
10 sign, and they go.

11 Q If during a -- a year, an incentive
12 compensation year -- well, you got monthly reports
13 as well; right? --

14 A Correct.

15 Q -- in addition to just the quarterly
16 reports?

17 A Correct.

18 Q And -- and did the monthly reports allow
19 you to sort of track your progress against goal?

20 A Correct.

21 Q More real time than the quarterly reports
22 did?

23 A To some extent.

24 Q Okay. And if you saw that you were not
25 tracking to meet goal for a particular product, did

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Exhibit 14, at the top there, it states that:

2 "Winning Practices are the
3 skills, knowledge and behaviors
4 demonstrated by GSK's most successful
5 sales representatives and managers."

6 Did I read that correctly?

7 A Yes.

8 Q And is that what you understood winning
9 practices to be at GSK while you were employed
10 there?

11 A I think this is what marketing wanted us to
12 do.

13 Q That's not my question. My question is,
14 when you thought of the term "winning practices"
15 while you were employed at GlaxoSmithKline, first of
16 all, you thought of this document.

17 A I did.

18 Q All right.

19 A That, I did not.

20 Q All right. And you understood that the
21 winning practices were considered by GSK, anyway, to
22 be the skills, knowledge, and behaviors demonstrated
23 by its most successful sales representatives and
24 managers; correct?

25 A That is correct.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q All right. And you understood that the
2 winning practices were used to evaluate the
3 performance of GSK pharmaceutical sales
4 representatives?

5 A Correct.

6 Q All right. And there were three different
7 levels of -- well, four really -- four different
8 levels of proficiency under the winning practices;
9 correct?

10 A Correct.

11 Q And those four are set forth on that same
12 page, the third page of Exhibit 14,
13 "Prefoundational, Foundational, Proficient, and
14 Expert"?

15 A Yes.

16 Q All right. And you're familiar with those
17 rating names; correct?

18 A I am.

19 Q All right. And -- and your performance,
20 actually, your individual performance was evaluated
21 by your district managers against these winning
22 practices; correct?

23 A Correct.

24 Q All right. Do you recall in early 2008
25 being asked by Tom Tyma to complete a winning

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q And then the X's in the boxes indicate the
2 rating you gave to yourself on each of those
3 measures; correct?

4 A Correct.

5 Q All right. Now, if you would keep that
6 exhibit in front of you and at the same time go back
7 to Exhibit 14, which is the actual winning practices
8 document, I want to ask you some questions about
9 that.

10 A Okay.

11 Q You'll need both -- you'll need both
12 documents sort of -- yeah. Okay.

13 All right. Looking at your
14 self-assessment, the first winning practice is "Own
15 the Territory Business"; right?

16 A Correct.

17 Q And the first of those subparts under "Own
18 the Territory Business" is "Analyze what is
19 happening in the territory and understand why," and
20 you rated yourself "Expert" on that piece; correct?

21 A I may not be reading this right.

22 Q It is a little confusing. I think what
23 happens is the "Prefoundational" should be over here
24 and the document -- I can't imagine you rated
25 yourself "Prefoundational" on any of these things.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A I wasn't thinking so, but I sent the email
2 at 12:30 in the morning; so maybe.

3 Q Well, does it make sense to you we've got
4 four columns here next to the measures?

5 A Yes. Oh, it does.

6 Q Okay. So -- so you would agree, then,
7 under the first measure under winning practice
8 No. 1, you rated yourself "Expert"?

9 A I would think I did.

10 Q All right. If you would go back and look
11 at the "winning practices" document, which is
12 Exhibit 14, if you turn to the fourth page of that
13 document, here is where that winning practice No. 1,
14 "Own the Territory Business" is explained; correct?

15 A Uh-huh.

16 Q Correct?

17 A Correct.

18 Q And under the "Expert" box for "Analyze
19 what is happening in the territory and understand
20 why," it states, to be expert on that measure, you:

21 "Gain competitive advantage by
22 participating opportunities and
23 challenges, interpreting the latest
24 results for others and leading [the]
25 team action to grow the business."

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Correct?

2 A Yeah.

3 Q And you did that as a pharmaceutical sales
4 representative; correct?

5 A I seem to think so.

6 Q It also states:

7 "Discern the activity of the
8 competition in the local marketplace
9 and what the team needs to do to be
10 effective."

11 It was your self-assessment that you also
12 did that; correct?

13 A Yes.

14 Q All right. Back to your self-assessment,
15 which is part of Exhibit No. 15, the second measure
16 under Winning Practice No. 1:

17 "Plan what each team member will
18 do to drive superior sales for each
19 promoted product."

20 You rated yourself "Proficient" on that
21 measure; correct?

22 A Correct.

23 Q All right. And the next one down:

24 "Execute your team's territory
25 plan flawlessly, monitor progress,

Buchanan, Frank 4/23/2009 9:40:00 AM

1 prescribing trends and use this

2 insight to tailor the selling

3 approach to drive sales."

4 A Correct.

5 Q And you certainly did that; correct?

6 A Yes. This speaks exactly to the issue I

7 had with getting flawed data.

8 Q Well, you would -- you would agree, related

9 to this that there's not a "one size fits all"

10 approach to going out to these physicians?

11 A There is not a -- there's not a -- there's

12 not a one -- you just don't repeat yourself all day

13 long.

14 Q Right.

15 A You use the same resources over and over

16 and over.

17 Q Okay. Also, under this "Expert"

18 description of "Gain Insight" under Winning Practice

19 No. 4, it states:

20 "Show awareness of multicultural

21 and other individual differences

22 among your customers and adapt

23 selling approaches to reflect these."

24 And you certainly did that?

25 A Yeah.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q Sticking with Winning Practice No. 4 but
2 going down to the third measure, which is "Organize
3 the sales call to maximize your selling time and
4 results," you rated yourself "Expert" on that; and
5 in the "winning practices" document, Exhibit 14,
6 that description of "Expert" is:

7 "Prepare so well that you can
8 adjust your selling approach and
9 respond effectively to whatever the
10 customer says during the call."

11 And you certainly were able to do that?

12 A Most of the time, yeah.

13 Q Okay. And that required that you'd be
14 quick on your feet?

15 A Yes.

16 Q Flexible in your approach?

17 A You had to be -- you had to be prepared for
18 potential objections.

19 Remember when I was talking to you before
20 about the verbatims --

21 Q Yes.

22 A -- for handling -- you need to know which
23 one to hit when -- when you're hit with a -- an
24 objection. In my opinion, that's what it means by
25 being prepared to handle it.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q So is it accurate to say that you got a
2 tremendous amount of information in your head and
3 you've got to be able to pull out the right
4 information to respond to whatever the objection is
5 you get hit with?

6 A Right. The more effectively you do that,
7 the better chance you have at keeping the doctor's
8 interest.

9 Q Okay. Winning Practice No. 5 on the
10 self-assessment is "Sell Through Customer-Focused
11 Dialogue"; and again on all three of these
12 submeasures, you rated yourself "Expert"; correct?

13 A Yes.

14 Q And if you look back at the "winning
15 practices" document, the description of this fifth
16 winning practice under the "Expert" column on the
17 first measure, positioning the brand, the second
18 part of what it says there is:

19 "Consistently uncover customer
20 needs and opportunity with insightful
21 questions and active listening."

22 Did you consider that to be an important
23 part of what you did?

24 A I'm sorry. Tell me where you are.

25 Q Yeah. I'm on the fifth winning practice in

Buchanan, Frank 4/23/2009 9:40:00 AM

1 wouldn't. They are not even listening. Kind of
2 look up.

3 So -- but to answer your question, yes,
4 there are times that you could tell they're
5 listening or they're dialed -- dialed into what
6 you're -- what you're saying.

7 Q Okay. Back on your
8 self-assessment-assessment document, Winning
9 Practice No. 6 is "Get the Best Possible Commitment
10 on Every Call." You rated yourself "Proficient" on
11 each of those subparts; correct?

12 A Yes.

13 Q All right. And looking at the "winning
14 practices" document with respect to Winning Practice
15 No. 6, the boxes there for those three measures
16 under "Proficient," you believe that that's how you
17 performed against that measure; correct? Proficient
18 as described in the "winning practices" document?

19 A I think this was the biggest weakness that
20 I had as a pharmaceutical rep.

21 Q Can you be more specific. Biggest weakness
22 as to what?

23 A This was my -- when I looked at my own
24 development, this was, by far, my greatest weakness.

25 Q This particular winning practice?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A Getting the commitment because I came --
2 and still is. I came from an environment of "You
3 can tie them down. You can get a commitment. You
4 could get a signature. You could get a deal done."

5 And here they can tell you anything they
6 want. They can "Yes" you to death. "I'll write it
7 for every patient." They can do whatever they want
8 after that. There is nothing I can do about that.

9 So this is where I struggle the most as a
10 pharmaceutical respect.

11 Q Irrespective of whether they actually
12 follow through, you're still charged with asking for
13 the commitment?

14 A Oh, without a doubt. The -- one of the
15 doctor types that we trained for is the "yes"
16 doctor, the "yes" man -- "Oh, I write that all the
17 time. It's the greatest drug ever."

18 You know, "Will you this or that?" Will
19 you prescr- --

20 "Yeah, oh, yeah. I'll write it all day.
21 Every patient I see. I'll write it for people that
22 don't even have that disease."

23 What do you do with that?

24 Q That -- that was not the common doctor, I
25 presume.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 and assign blame; so --

2 Q Okay.

3 A -- I can't say the Imitrex numbers were
4 down because of us. You got to blame somebody.

5 Q In the next section down, the
6 "Director/Manager Comments" section, is it accurate
7 to say that this is something that Mr. Golson added?
8 These are his comments?

9 A I would think so.

10 Q All right. And in the second sentence
11 there, he writes:

12 "When Frank thinks about the
13 business and what to do to grow the
14 business he employs what he call
15 [sic] his 'as if' method of
16 thinking -- and then in parentheses,
17 "(if I look at the territory 'as if'
18 it were my own small business, how
19 would I spend my resources to
20 maximize my return on investment)."

21 Did you -- did you have conversations with
22 Mr. Golson about this "as if" method of thinking
23 that you used?

24 A It looks -- yeah. Looks like it.

25 Q Okay. Does that accurately characterize

Buchanan, Frank 4/23/2009 9:40:00 AM

1 your -- your way of approaching your business?

2 A It was at the time.

3 Q All right. Then down at the bottom of that
4 same page under "Strengths," which is the section
5 that you as the employee completed, there's an "Own
6 the Territory Business" section, and you state
7 there:

8 "I function at an 'expert' level
9 with this winning practice. I
10 evaluate the territory routinely and
11 I anticipate trends. I also utilize
12 all resources to the maximum to
13 create favorable outcome. Lastly, I
14 consistently take initiative to
15 identify potential/actual advantages
16 and challenges. I then take the lead
17 to maximize the advantages and reduce
18 the impact of the challenges."

19 Did I read that correctly?

20 A Yes.

21 Q How did you do that?

22 A It comes down to -- you know, anticipating,
23 for example, Symbicort was going to launch; so
24 there's physicians that loved new drugs, loved to
25 write new drugs as soon as they came out. So then

Buchanan, Frank 4/23/2009 9:40:00 AM

1 try and determine who that would be and position our
2 product against them prior to launch so that they
3 don't -- you don't drop market share immediately to
4 a new product.

5 That -- that would be an example of what
6 you would do as far as anticipating where it's going
7 to go.

8 MS. SHAD: What number are we up to?

9 THE REPORTER: 17.

10 (The document referred to was marked as

11 Buchanan Exhibit 17 by the Reporter.)

12 BY MS. SHAD:

13 Q Since you mentioned Symbicort, I'll show
14 you what's been marked Exhibit 17, and again it's in
15 an odd format.

16 But do you recognize that to be an email
17 first from Mr. -- at the top, from Mr. Tyma to you,
18 thanking you for extra effort and indicating that
19 he's going to share what you've provided him with
20 the north team?

21 A Yes.

22 Q All right. And then below that is your
23 email to Tom and to a host of other folks, which I
24 presume to be other sales reps.

25 A Correct.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q Is it accurate to say that this text in
2 your email response to Miss Gavin is your
3 articulation of an appropriate dialogue to have with
4 a physician?

5 A It absolutely is.

6 Q This isn't something that was provided to
7 you by the company. You came up with these
8 messages, within guidelines, on your own?

9 A Yes and no. You'll find a lot of these in
10 the sales paper or in the sales aid or the clinical
11 reprints. I even footnoted some of them where I
12 said, you know, "Use the Nelson paper."

13 I can't really strike any of these as my
14 own original ideas, but this is the way I organized
15 thoughts.

16 She is relatively new to the product, was
17 struggling with the clinical side of it. Danielle
18 got sales results through relationship, not so much
19 the scientific knowledge; so she was somebody that I
20 thought, if she strengthened her clinical side just
21 a little, if she sharpened it a little bit, she
22 could talk competently to the science and probably
23 do much better; so --

24 Q So -- so essentially -- and I understand
25 you cannot use information that is not approved

Buchanan, Frank 4/23/2009 9:40:00 AM

1 information about a drug product.

2 A Correct.

3 Q But these messages here that you've put
4 together is -- is, again, your articulation of
5 approved information, the way that you think it best
6 makes sense to present; correct?

7 A Correct.

8 Q And at the end of each of these, there is a
9 commitment question, is there not?

10 A Yes.

11 Q In fact, under the "why initiate?"
12 paragraph at the end of the message you have
13 written, "Will you prescribe Advair 100/50 for
14 moderate patients that require initiation of
15 combination therapy?" Correct?

16 A Correct. They walked through -- I walked
17 through the GSK sales model step by step.

18 Q Okay.

19 A To be direct, I was probably concerned this
20 was going to end up in front of my boss, and I
21 wanted to make sure all bases were covered.

22 Q You did the same thing with respect to
23 commitment on the step-up message; correct?

24 A Correct. That's why each one starts with a
25 statement that grabs thought and moves to

Buchanan, Frank 4/23/2009 9:40:00 AM

1 transition, et cetera. Yeah. I just walked through
2 the sales model.

3 MS. SHAD: Okay. I want to take a quick
4 break, organize myself a little bit here.

5 THE VIDEOGRAPHER: Off the record at 3:40.

6 (A brief recess was taken.)

7 THE VIDEOGRAPHER: We are back on the
8 record at 3:50.

9 BY MS. SHAD:

10 Q Mr. Buchanan, is it accurate to say that
11 part of what you did as a pharmaceutical sales rep
12 was to study and analyze the data that the company
13 provided you about physicians' prescribing habits to
14 try to determine who you should call on and what
15 kind of success you might have with individual
16 physicians?

17 A It didn't help so much with who to call on.
18 That was pretty well set out for us.

19 Q Okay.

20 A But it definitely would help with -- with
21 going in -- kind of like I was talking about before,
22 kind of the call goal.

23 Q Yes.

24 A So if the easiest place to increase market
25 share is -- is someone who is already writing a

Buchanan, Frank 4/23/2009 9:40:00 AM

1 product -- so if they start to go down in market

2 share, doctors rarely do things at random.

3 So there is probably a reason. So they

4 have more to do with that than who we called on.

5 We -- we didn't have a whole lot of discretion in

6 who we got to see.

7 Q It had more to do more with the goal of the

8 call?

9 A Correct. It had more to do with what you

10 did in front of the doctor rather than who -- which

11 doctor.

12 Q Okay. That makes sense.

13 With respect to -- to clinical studies, you

14 had reprints of those studies; correct? That's one

15 of the things that you could take with you. One of

16 the reprints you had available to you?

17 A Correct.

18 Q And did those reprints help you anticipate

19 and respond to questions that might come up during

20 the call?

21 A They -- they did.

22 For me personally, what they did is they

23 gave me credibility so that, if I told a doctor, I

24 would -- I would make a statement, for example,

25 "Advair is more effective at relieving broncho

Buchanan, Frank 4/23/2009 9:40:00 AM

1 constriction than Flovent alone."

2 If the doctor were to challenge me on that,
3 I knew which clinical to get out and show -- show
4 that doctor "This isn't my idea. This came from a
5 clinical trial. It was well-controlled." Present
6 it in that fashion.

7 Q Right. Okay. When you were a
8 pharmaceutical sales rep for GSK, you did not have
9 an office at any GSK facility, correct?

10 A I did not.

11 Q You had an office in your home?

12 A I did.

13 Q And was that your only office?

14 A Yes.

15 Q How many hours per day on average would you
16 say you worked from your home office while you were
17 employed by GlaxoSmithKline?

18 A As an average?

19 Q Yeah.

20 A I would say probably 45 minutes to an hour
21 in the morning and anywhere from one to three to
22 four hours at night. It really depended on -- on
23 the workload at the time.

24 If I had to put a number on it, I -- I
25 would say -- trying to think of -- trying to make it

Buchanan, Frank 4/23/2009 9:40:00 AM

1 hours on average per week?

2 A Correct.

3 Q How many hours per day did you spend in the
4 field?

5 A That varied. I usually -- typically, my
6 routine, I drop my kids off at school about a
7 quarter to 8:00 and would usually head to the
8 territory then, sometimes to my storage unit,
9 depending on what I had to do at that point.

10 But I would get into the territory between
11 8:30 and 9:00 pretty -- pretty typically. That
12 would -- that would be my standard arrival time into
13 the territory.

14 And then, really, departure, whatever time
15 I -- I finished for the day, when I was done with --
16 with the calls that I needed to get in, both the
17 pharmacy and physician. I would say that would be
18 anywhere from 4:00 to 5:00 usually would be a fair
19 statement to say when I would leave the territory.

20 Q And you would get home around what time,
21 then, typically?

22 A I would get home between 5:30 and 6:00
23 pretty consistently, sometimes later if traffic was
24 bad or an accident. But that was pretty consistent.

25 Q You said you went to your storage facility

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A Correct.

2 Q And that goes into your 50 hours, on

3 average, a week?

4 A Correct.

5 Q How did you decide whether to leave samples

6 in a physician's office or not and, if you did leave

7 them, how many to leave?

8 A There -- there is -- there's -- there's

9 different thoughts on that. There are reps that

10 dump cases of samples in offices. What you want to

11 temper with a physician as your goal as a rep is to

12 have one sample leave with a script every time.

13 That's what you want.

14 There are offices that operate as

15 pharmacies. You know, they call the patient, "Hey,

16 your Advair is here," because I'm standing there.

17 And they grab four samples, and they put it in a

18 brown bag, and they write the patient's name on it.

19 They don't sell them. They're not doing anything

20 illegal, but that kills your -- your ability to get

21 business; so you have to take into account the

22 office environment.

23 We also track something called the

24 sample-to-new Rx ratio. You wanted that to be 1 to

25 1. When it got really high, you didn't -- you

Buchanan, Frank 4/23/2009 9:40:00 AM

1 didn't want to sample a lot there. You know, when
2 you were getting one script for every nine samples
3 you leave, you're wasting samples.

4 And they're a very finite resource. It is
5 a big bulk of what a physician puts on your value as
6 a rep is samples; so sometimes they feel pressured
7 to leave more.

8 I did act as if they were mine, and I paid
9 for them.

10 Q It looks like you put thought into what you
11 were doing. You didn't just do the same thing in
12 every doctor's office with respect to samples. You
13 actually thought about it.

14 A There was a minimum standard that we agreed
15 to as a team that you leave at least two, make sure
16 there's two on every shelf as a minimum no matter
17 what the office politics are. So there was -- I
18 guess there was a standard minimum, no matter what
19 you left.

20 Q And then above that, it was within your
21 discretion to figure it out?

22 A Correct.

23 Q Based on your prior testimony just a minute
24 ago about your -- your schedule --

25 A Uh-huh.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q -- your managers didn't tell you that you
2 had to do your home office work at any particular
3 time or on any particular day; correct?

4 A They did. There was -- there was certain
5 standards that had to be met that they would make
6 explicit, like, calls needed to be entered daily,
7 computer transmitted daily, email answered daily,
8 voicemail checked three times a day.

9 The one initially that I struggled with as
10 a rep was expense reports every two weeks. You
11 know, those were things that -- they were pretty
12 firm about.

13 Q Those are things you had to do; but, I
14 mean, you could enter your calls at 6:30 at night,
15 or you could enter your calls at 11:30 at night.
16 That was within your --

17 A Correct.

18 Q You -- you organized your own schedule that
19 way?

20 A You could fit those things into your --
21 into your personal life, as I think we all do with
22 career.

23 Q How often in a week would you actually have
24 any direct communications, live communications, with
25 your manager when it was Mr. Golson?

Buchanan, Frank 4/23/2009 9:40:00 AM

1 A With Joe? I would probably talk to him
2 live three or four times a week.

3 He rode with us a lot. Joe was a lot like
4 me as far as, you know, he was given a directive
5 that he needed to be in the field 90 percent of the
6 time; so I rode with Joe probably every three weeks,
7 you know, four weeks, depending on the travel
8 schedules and things like that.

9 And, obviously, he wasn't with you all the
10 time, but I would say we talked live on the phone
11 probably two or three times a week. We traded
12 voicemails. We had a voicemail system. That was
13 probably our primary mode of communication. I only
14 called him on his cell phone if I needed something
15 that was urgent, and -- and he would do the same
16 with me.

17 So, yeah, that wouldn't happen but maybe a
18 couple times per week.

19 Q Is it accurate to say that, other than on
20 the days that he actually rode along with you, you
21 didn't have direct supervision in what you were
22 doing during the course of your day?

23 A Not from a human being. There's a lot of
24 electronic surveillance as far as call entry and
25 these kinds of things that, you know, you get a --

Buchanan, Frank 4/23/2009 9:40:00 AM

1 get a report. You know, they'd go over calls per
2 day, how many doctors you sampled -- actually got
3 signatures, things of that nature.

4 But, no, as far as someone literally
5 watching what you do, no, only when they were with
6 you.

7 Q Right. Right.

8 During these ride-alongs that you mentioned
9 that your managers, Mr. Golson and Mr. Tyma, I guess
10 for a very brief period, would do, they evaluated
11 you and gave coaching to you through the course of
12 that day ride-along?

13 A Correct.

14 Q Okay. And at the end of the ride-along, do
15 you recall that there were things called Field
16 Coaching Tools or Field Coaching Reports that were
17 completed?

18 A Correct.

19 Q And those documents contained lots of
20 information?

21 A Correct.

22 Q And you had an opportunity to comment in
23 each of those Field Coaching Tools or Field Coaching
24 Reports yourself; correct?

25 A That is correct.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 pharmaceutical sales representative for GSK, I
2 understand that you would receive a list of
3 physicians to call on; correct?

4 A That is correct.

5 Q Mr. Christopher testified yesterday that
6 there would be some occasions where a new physician
7 would move into the area or join a practice and he
8 might know about that before the company did and he
9 could tell somebody, "Look, you ought to add this
10 guy or this woman to the list."

11 Did you have that experience as well?

12 A I did. They had a very formal process in
13 place.

14 I -- I treaded very, very lightly with
15 that. I typically would let somebody else do it
16 only because there was -- there was a lot of people
17 that were fired for inappropriately adding or
18 deleting doctors; so I just didn't want to be
19 involved in that practice really at all.

20 Q And those people didn't go through the
21 proper process. Is that your understanding?

22 A From what I understand; correct.

23 Q But it is your understanding that there was
24 a process by which --

25 A There was.

Buchanan, Frank 4/23/2009 9:40:00 AM

1 Q -- the reps could --

2 A There was.

3 Q -- could suggest to the company that new
4 physicians be added?

5 A Correct.

6 Q Okay. You talked much earlier in the day
7 about a time when you had moved to Phoenix but you
8 still had your Northern Arizona territory.

9 A Correct.

10 Q And I believe you testified that during
11 that time you would actually go and physically
12 reside in the Northern Arizona territory during the
13 week?

14 A That is correct.

15 Q I want to talk to you a little bit more
16 about that.

17 Would you go on Sunday night or Monday
18 mornings?

19 A Depending on the week, most consistently
20 Sunday nights.

21 Q All right.

22 A There would be sometimes that we would have
23 a church activity or something that carried into the
24 evening on Sundays; so then I'd leave Monday
25 morning, but far and away most consistently I'd

1 I, ALTHEA L. MILLER, CSR No. 3353, certify:

2 That the foregoing deposition of
3 FRANK T. BUCHANAN was taken before me at the time
4 and place therein set forth, at which time the
5 witness declared under penalty of perjury to tell
6 the truth;

7 That the testimony of the witness and all
8 objections made at the time of the deposition were
9 recorded stenographically by me and were reduced to
10 a computerized transcript under my direction;

11 That this transcript is a true record of
12 the testimony of the witness and of all objections
13 and colloquy made at the time of the deposition.

14 I further certify that I am neither counsel
15 for nor related to any party to said action nor
16 interested in the outcome.

17 The certification of this transcript does
18 not apply to any reproduction of the same by any
19 means unless under the direct control and/or
20 direction of the certifying deposition reporter.

21 IN WITNESS WHEREOF, I have subscribed my
22 name this 27th day of April, 2009.

23 
24 ALTHEA L. MILLER, CSR No. 3353, RPR
25